

EXHIBIT B

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VOLUME III

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary :MDL NO. 1358 (SAS)
Butyl Ether ("MTBE") :
Products Liability :
Litigation :

In Re:

City of New York

CONFIDENTIAL (Per 2004 MDL 1358 Order)

July 1, 2009

Continued CONFIDENTIAL

Videotaped Deposition of DAVID B. TERRY,
P.G., held in the law offices of
McDermott, Will & Emery, 340 Madison
Avenue in New York, New York, beginning
at approximately 9:34 a.m., before Ann
V. Kaufmann, a Registered Professional
Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
Court, and a Notary Public.

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<p>1 A. Well, I mean, within 2 the level of precision that we are 3 talking about, they are in the same 4 range, both -- all these analyses are in 5 the same range, so that's really what 6 I'm talking about, most likely.</p> <p>7 Q. And the level of precision 8 is reflected by your projections in 9 scenarios 2A, 2B, and 2C?</p> <p>10 A. Well, those are just 11 different mass assumptions or mass 12 ranges that we used in conducting 13 Analysis 2.</p> <p>14 Q. I will ask the question 15 once again. With respect to the various 16 scenarios that you've set forth in your 17 February 6 report, February 27 report, 18 March 23 report, and April 20 report, 19 which of the Analysis 2 scenarios in 20 your opinion to a reasonable degree of 21 scientific probability best represents 22 what you believe the concentration of 23 MTBE will be at Station 6 in the future?</p> <p>24 A. I'm not sure that any one</p>	<p>1 specifically what that range of mass is, 2 that's going to affect the ultimate 3 concentration. What we used was 4 reasonable estimates of those masses, 5 but those masses aren't known.</p> <p>6 Q. With regard to the 7 predictions of future concentrations of 8 MTBE in Station 6 using Analysis 2, did 9 you actually calculate a statistical 10 confidence interval bounding those 11 estimates?</p> <p>12 A. No, we did not.</p> <p>13 Q. With regard to the MT3D 14 modeling that was performed for 15 Analysis 2, do you know from your 16 experience or from the literature 17 whether or not these types of estimates 18 have a generally accepted error rate?</p> <p>19 A. No, I don't believe that 20 they do.</p> <p>21 Q. With respect to your work 22 as a professional, have you in your 23 professional work ever done a post-audit 24 analysis of any of your predictions for</p>
<p>1 of them is better than another. I mean, 2 they are all roughly the same result, 3 and so that's what I'm really testifying 4 about. Not so much specifically is the 5 number 17 or is it 18; that's not so 6 much my conclusion as it is the 7 generality of what we're seeing.</p> <p>8 Q. And the generality that you 9 are seeing is what?</p> <p>10 A. Is a peak concentration in 11 that range for Analysis 2 and then a 12 decline in concentration over time and 13 eventually a longer term, more fixed 14 concentration.</p> <p>15 Q. With regard to the 16 precision of your estimates using 17 Analysis 2, can you state to a 18 reasonable degree of scientific 19 probability what the confidence interval 20 is that bounds those estimates?</p> <p>21 A. I can't really state that 22 except there's a certain range of mass 23 that's been, you know, input into the 24 aquifer over time. So depending on</p>	<p>1 MTBE concentrations at any of the other 2 sites you've worked at?</p> <p>3 A. I don't know if I would 4 call it a post-audit analysis. We've 5 certainly had situations where we have 6 projected sort of either the timing or 7 concentration of the arrival of a 8 contaminant and then, you know, lived to 9 see or experience what actually occurred 10 at those locations.</p> <p>11 Q. And did you ever document 12 any of those observations regarding 13 whether or not the predictions that you 14 made came to pass in a peer-reviewed 15 journal article?</p> <p>16 A. In a peer-reviewed journal 17 article?</p> <p>18 Q. Yes, sir.</p> <p>19 A. No, not in a peer-reviewed 20 journal article.</p> <p>21 Q. With respect to your 22 professional work for any of the 23 modeling that you have performed, have 24 you ever conducted a formal post-audit</p>

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<p>1 analysis to determine whether predicted 2 concentrations using the model actually 3 occurred in reality?</p> <p>4 A. As I said, I don't think 5 I've done a formal post-audit analysis. 6 I have certainly, you know, seen results 7 post-projection in that sense, but that 8 wasn't a formal post-audit as you are 9 describing.</p> <p>10 Q. With respect to the 11 precision of the estimates that you have 12 made in this case, what precision do you 13 assign to the estimated future 14 concentration of MTBE using Analysis 2 15 for Station 6 wells?</p> <p>16 A. Well, I think what I'm 17 testifying about here is that the most 18 likely of the scenarios that we 19 developed in Analysis 2 is the 2,000- 20 gallon release scenario, that 21 Analysis 2C.</p> <p>22 And the reason for that is 23 if you look at the area of capture zone 24 for Station 6, it is approximately 7</p>	<p>1 because we don't have the data that 2 would allow us to do that.</p> <p>3 Q. Can you for the jury in 4 this case quantify the precision of your 5 estimates of the future concentration of 6 MTBE in Station 6 wells such that they 7 would know what the upper bound limit is 8 and what the lower bound limit is?</p> <p>9 A. Well, I think what we did 10 is a range of assessments. We did -- 11 and I would say that our Analysis 1 12 assessment represented more of an upper- 13 range estimate and our Analysis 2C was 14 more of a lower range. But they are 15 both, you know, reasonable scenarios. 16 Certainly they're both -- in both cases 17 there could be more mass there than what 18 we've used. But they are reasonable 19 scenarios, so I would use them as a 20 range.</p> <p>21 Q. With respect to the 22 Analysis 2 that you performed in this 23 case, and specifically the projections 24 in scenario 2C, can you quantify with</p>
<p>1 miles. And if you look at the multitude 2 of sources that are in that area, the 3 total sort of mass that's in the capture 4 zone associated with the C scenario is 5 more likely than the A or B scenarios.</p> <p>6 Q. And what is the precision 7 that bounds that estimate using the 2C 8 scenario?</p> <p>9 A. Yeah, I can't really 10 express it in that form because the 11 mass, the quantum of the mass is 12 unknown.</p> <p>13 Q. With regard to the quantum 14 of mass, can you tell the jury in this 15 case what the precision is regarding the 16 estimate of the quantum of mass?</p> <p>17 MR. GREENE: Object to form.</p> <p>18 A. I'm not -- what we did was 19 we looked at likely release scenarios at 20 these sites. We looked at the total 21 mass that was in the capture zone for 22 these wells. And those things represent 23 a reasonable scenario. But beyond that, 24 we can't statistically bound that</p>	<p>1 any reasonable degree of scientific 2 probability what the precision is of 3 that estimate?</p> <p>4 A. I don't think I can express 5 that as a percent precision, no.</p> <p>6 Q. With regard to Analysis 1 7 for purposes of this case, can you 8 quantify for the jury to any reasonable 9 degree of scientific probability the 10 accuracy or precision of the estimates 11 of future MTBE concentrations using that 12 scenario?</p> <p>13 A. I don't think I could 14 express it that way. All I'm saying is 15 that when we look at the total mass 16 that's in the capture zone for -- in 17 Analysis 1, that that represents a 18 reasonable estimate of the mass that's 19 in the capture zone. If there's mass in 20 the capture zone, it is going to arrive 21 in the future at Station 6.</p> <p>22 Q. And I'll ask the question 23 again: Can you with any mathematical 24 precision quantify for the jury to any</p>
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<p style="text-align: right;">Page 797</p> <p>1 reasonable degree of scientific 2 probability the precision of your 3 estimates of future MTBE concentrations 4 in Station 6 wells using Analysis 1?</p> <p>5 A. If you are looking for some 6 statistical measure of the precision, I 7 can't do that.</p> <p>8 Q. With regard to the method 9 that you employed in Analysis 1, based 10 on your review of peer-reviewed 11 engineering and scientific literature, 12 can you tell us whether there is a 13 generally accepted or known error rate 14 using that method to predict future 15 concentrations of contaminants in wells 16 like MTBE in Station 6?</p> <p>17 A. I mean, I think there's an 18 error rate inherent in the model; in 19 other words, there's a way to describe 20 whether the model can accurately 21 simulate the migration of MTBE. But the 22 other part of it is the mass that you 23 are putting into the model. And that's, 24 you know, classically in Long Island</p>	<p style="text-align: right;">Page 799</p> <p>1 available. And there is an 2 understandable reason why that data set 3 is not available. There's really no way 4 to, you know, accurately bound that in a 5 way that you could then statistically 6 test it.</p> <p>7 So what we did is take the 8 same approach that they did. And, you 9 know, historically the problem was that 10 MTBE mass wouldn't really be discovered 11 until it impacted a supply well. So 12 we're now going back to sources saying 13 why aren't we able to see this before it 14 impacts a supply well.</p> <p>15 And then, you know, the 16 development -- the method that they 17 developed was to say, you know, look for 18 evidence of the discharge, estimate the 19 mass associated with that discharge, and 20 then model that forward to see what 21 impacts that may have in the future. So 22 that's really the approach that we took 23 here.</p> <p>24 Q. With respect to Analysis 1,</p>
<p style="text-align: right;">Page 798</p> <p>1 MTBE contamination cases, that's been 2 the great unknown.</p> <p>3 So there's a paper, I think 4 it's by Weaver, Haas, and Sosik, that 5 describes the problem of trying to 6 quantify MTBE mass and understanding, 7 you know, where that MTBE mass is. The 8 approach that they are laying out is to 9 estimate, or if you have evidence of a 10 major discharge to calculate or estimate 11 the MTBE mass associated with that 12 discharge and then, you know, model that 13 forward or project forward where that 14 goes. So really that's the approach 15 that we took here.</p> <p>16 Unfortunately, one of the 17 characteristics of MTBE that was 18 discovered later is that the ways that 19 it's been monitored at discharge station 20 sites, which was really developed for 21 some of the other gasoline contaminants, 22 has been inadequate to characterize 23 MTBE, especially MTBE mass. So there's 24 really no way with the data set that's</p>	<p style="text-align: right;">Page 800</p> <p>1 did you calculate a confidence interval 2 which represents to a reasonable degree 3 of scientific probability the accuracy 4 or precision of the predictions of 5 future MTBE impacts in Station 6 wells?</p> <p>6 A. Well, we did an analysis 7 that just used target calibration 8 points, and we found that the model was 9 able, over that period of 2004 to 2008 10 was able to accurately describe what 11 happened at those points within 1.8 ppb 12 or so. So that is sort of one measure 13 of that.</p> <p>14 Q. Did you for purposes of 15 your opinions in this case use any 16 generally accepted statistical method 17 and calculate a confidence interval 18 which would permit you to a reasonable 19 degree of scientific probability to tell 20 the jury what the accuracy or precision 21 is of the estimates of future MTBE 22 impacts in Station 6 wells using 23 Analysis 1?</p> <p>24 A. Yeah, I don't think it's</p>

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<p>1 possible to do that with the data set 2 that we have on MTBE in this aquifer.</p> <p>3 Q. Can you quantify to any 4 reasonable degree of scientific 5 probability what the precision or 6 accuracy is using any generally accepted 7 statistical method for the future 8 impacts of MTBE in Station 6 using 9 Analysis 1?</p> <p>10 A. Well, I said, I think I 11 said we didn't use any statistical 12 analysis to do that kind of an estimate, 13 so....</p> <p>14 Q. You indicated that there 15 are known error factors using modeling. 16 You were referring to modeling using 17 MT3D?</p> <p>18 A. In any model.</p> <p>19 Q. And with regard to your 20 experience, what is the generally 21 accepted and known range of error using 22 deterministic models to predict the 23 concentration of a solute like MTBE in a 24 well in the future?</p>	<p>1 think there's a model that's ever been 2 created that has no error in it. 3 Really -- but error is, you know, an 4 interesting question because it really 5 depends on the problem that you are 6 using the model to address. So any 7 model has, you know, some kind of 8 difference in it compared to what 9 happens in reality.</p> <p>10 Q. With respect to the 11 question that was being addressed here, 12 was it your objective to predict 13 precisely what the concentration of MTBE 14 would be in Station 6 using the analysis 15 you employed?</p> <p>16 A. I don't know that 17 "precisely" is the word I would use. I 18 mean, what we're looking to do is that 19 -- the objective of our study is that a 20 treatment plan needs to be designed for 21 Station 6.</p> <p>22 And we know that there's 23 MTBE in the groundwater that's 24 intercepted by Station 6. So one of the</p>
<p style="text-align: center;">Page 802</p> <p>1 A. I'm not sure I understand 2 the question.</p> <p>3 Q. With respect to the models 4 that you've operated, particularly 5 MT3D --</p> <p>6 A. Uh-huh.</p> <p>7 Q. -- do you know what in the 8 literature is the generally accepted and 9 known error rate that bounds predictions 10 of future concentrations of a solute 11 like MTBE in a well in the future?</p> <p>12 A. Yeah, I don't think -- I 13 don't know of a generally accepted error 14 rate like that.</p> <p>15 Q. When you used the term 16 there there are some generally accepted 17 error rates, what were you referring to?</p> <p>18 A. I don't know if -- did I 19 say generally accepted error rates?</p> <p>20 Q. In response to the question 21 was there generally accepted, you said 22 you knew there were some error rates.</p> <p>23 A. Well, I mean, any model is 24 a approximation of reality. So I don't</p>	<p style="text-align: center;">Page 804</p> <p>1 questions that a design engineer has is 2 how much MTBE, in terms of 3 concentration, is going to occur at this 4 facility and how long is it going to 5 last? Because either one of those 6 questions could influence the selection 7 of specific remedial technology that's 8 used at that facility. To some extent 9 it has to be somewhat of a conservative 10 analysis when you do that. Your goal is 11 that you are protecting the quality of, 12 you know, potable drinking water.</p> <p>13 So that was really the goal 14 of this, was to say we know that there's 15 MTBE that has been discharged into the 16 aquifer within the capture zone of 17 Station 6. So knowing what information 18 we do have, what's a reasonable estimate 19 of what those concentrations would be in 20 the future so that when we design our -- 21 or select our treatment technology, it 22 is going to be adequately protective of 23 that drinking water source.</p> <p>24 Q. And with regard to the</p>

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<p>1 Analysis 1, you know, I couldn't state 2 from Analysis 1 by itself any 3 information about when a discharge 4 occurred.</p> <p>5 Q. With regard to Analysis 2 6 for Station 6, can you state an opinion 7 to a reasonable degree of scientific 8 probability exactly when gasoline with 9 MTBE was first released into the 10 groundwater beneath each of those 11 stations?</p> <p>12 A. Well, for Analysis 2 we had 13 release dates or we had spill number 14 dates. So sometimes those spill number 15 dates are associated with when the 16 contamination was discovered. So they 17 may not exactly replicate the date that 18 the spill occurred. We used them as a 19 tool to estimate when spills occurred, 20 but there's some difference between some 21 of those dates and the actual spill 22 dates.</p> <p>23 Q. Fair to say that you used 24 the spill report date and that the</p>	<p>1 probability exactly when MTBE first 2 entered the groundwater system at those 3 locations?</p> <p>4 MR. GREENE: Object to the 5 form.</p> <p>6 You can answer.</p> <p>7 A. I'm sorry, I'm going to 8 have to have you repeat it, just because 9 I lost it.</p> <p>10 MR. GREENE: I apologize, 11 too.</p> <p>12 Q. With respect to the 13 stations where the exact date of the 14 release may not be known because you are 15 working from the spill date and the 16 report of the contamination, are you 17 able to state an opinion to any 18 reasonable degree of scientific 19 probability exactly when MTBE was first 20 released into groundwater at that site?</p> <p>21 A. I don't think you can say 22 when MTBE absolutely first reached 23 groundwater. Some of the sites that we 24 looked at had multiple spill reports.</p>
<p style="text-align: center;">Page 846</p> <p>1 actual release into groundwater occurred 2 prior to that date but you don't know 3 exactly when?</p> <p>4 A. I think it's fair to say 5 that if we are looking at a case 6 where -- especially the cases, as a lot 7 of them were, where the discovery was 8 related to tank closure and replacement, 9 so you are going in, you are replacing a 10 tank, there is no report of any 11 discharge at a site, you are digging 12 into the ground, you're removing tanks, 13 and you are seeing the tanks have holes 14 in them, which is often the case, or you 15 are seeing a substantial amount of soil 16 contamination, that it's fair to say 17 that the discharge that caused that 18 contamination occurred prior to that day 19 that you discovered it. That's fair to 20 say.</p> <p>21 Q. And with regard to those 22 stations where the date of release is 23 unknown, can you state with any 24 reasonable degree of scientific</p>	<p style="text-align: center;">Page 848</p> <p>1 So in some cases I think there was cases 2 where there was an investigation done 3 initially and then there was an 4 investigation done later.</p> <p>5 Sometimes the later results 6 were different than the initial 7 results. So, you know, from that you 8 might conclude that the later spill 9 date -- that there was some kind of 10 discharge in between those two dates, 11 you can bound it. And in all the cases 12 I think you could bound the upper end 13 because you know when it was 14 discovered. But I don't -- in many 15 cases you can't bound the lower end 16 completely, that's true.</p> <p>17 MR. STACK: The videographer 18 has told us we are about to run out of 19 tape, Mr. Terry. So we will take a 20 break and resume promptly, if we can.</p> <p>21 MR. GREENE: Great. Thanks.</p> <p>22 THE VIDEOGRAPHER: We're 23 going off the record. The time is 24 10:34 a.m. This is the end of tape 1 of</p>

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<p>1 MTBE being present at 113-40 Merrick 2 Boulevard; am I correct?</p> <p>3 A. Right. Initially there's 4 an innermost area of contour that we had 5 assigned a value of 78,802, but that was 6 actually the total VOC concentration at 7 that location. The MTBE component of 8 that was 65,900 ppb. So we changed the 9 value of that in the model to reflect 10 the MTBE value.</p> <p>11 Q. And do you know with 12 respect to that particular value whether 13 it was a value that was observed in a 14 soil vapor extraction well?</p> <p>15 A. I don't recall.</p> <p>16 MR. STACK: The videographer 17 has indicated that we're about ready to 18 run out of tape, so we'll go off the 19 record and afford him an opportunity to 20 do so and give you a chance to stretch 21 your legs as we head into the home 22 stretch.</p> <p>23 THE VIDEOGRAPHER: We're 24 going off the record. The time is</p>	<p>1 interval to indicate that there is MTBE 2 present in the groundwater system at the 3 concentrations shown in Figure 4?</p> <p>4 A. I'll assume you mean 5 S6-022. No, there's no specific 6 monitoring well data in between those 7 two points.</p> <p>8 Q. With regard to the distance 9 between S6-025 and S6-026, is there any 10 groundwater monitoring data between 11 those two points to indicate that the 12 concentration of MTBE reflected on 13 Figure 4 has actually been detected 14 through testing in the groundwater in 15 that particular transect?</p> <p>16 A. No, there is not.</p> <p>17 Q. With regard to other areas 18 on this map, there is a depiction which 19 you have background levels, and the 20 background levels for the area lying -- 21 I'm going to the left side of the map, 22 Dave -- between 3651 down to 3161, that 23 would appear to be approximately 2.8 24 miles, and there is concentration of</p>
<p>1 3:04 p.m. This is the end of tape 4 of 2 the deposition of David Terry.</p> <p>3 (Recess.)</p> <p>4 THE VIDEOGRAPHER: Back on 5 the record. The time is 3:14 p.m. This 6 is the start of tape 5 of the deposition 7 of David Terry.</p> <p>8 BY MR. STACK:</p> <p>9 Q. Mr. Terry, with respect to 10 the Analysis 1 that you performed, you 11 made certain changes that you've 12 indicated on page 21 to vary the contour 13 line in proximity to well 6D and to 14 revise the maximum concentration contour 15 at the service station at 113-40 Merrick 16 Boulevard.</p> <p>17 In looking at Figure 4, 18 there are areas within this depiction; 19 for example, the area going from S6-005 20 down to S6-002. That area, according to 21 the scale on the map, is approximately a 22 mile and a half.</p> <p>23 Do you have any monitoring 24 well data in that mile-and-a-half</p>	<p>1 MTBE that's illustrated as being present 2 there.</p> <p>3 I don't want to try to 4 interpret the map because the color is 5 sometimes difficult. What is the 6 concentration of MTBE that is 7 illustrated between well 3651 and 3161 8 on Figure 4 in your rebuttal report?</p> <p>9 A. I believe that's 0.1 ppb.</p> <p>10 Q. And is there any 11 groundwater monitoring well between 12 those points to indicate that there's 13 any contamination present in the 14 groundwater at those locations?</p> <p>15 A. Not depicted here, no.</p> <p>16 Q. With regard to the area in 17 the vicinity of S6-023, there is 18 contamination in the vicinity of that 19 location. And there is a plume or area 20 of contamination which appears to be 21 lying north of the pyramid to show the 22 location.</p> <p>23 Is there any evidence that 24 at the Service Station S6-023 that</p>

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<p>1 groundwater is moving northward and that 2 contamination at that site is moving 3 northward?</p> <p>4 A. I don't think so.</p> <p>5 Q. Is there any data in the 6 reddish-pink area surrounding S6-023 to 7 confirm that there is MTBE present in 8 the groundwater system at the 9 concentration shown on Figure 4?</p> <p>10 A. Well, in the middle, 11 S6-023, is where the data is. That's 12 where we do have data.</p> <p>13 Q. And the only point is where 14 the one well is located at S6-023; am I 15 correct?</p> <p>16 A. Right.</p> <p>17 Q. Is there any data to 18 indicate anywhere else in that reddish 19 area surrounding S6-023 that there is a 20 monitoring well from which data obtained 21 from sampling in 2004 indicates the 22 concentration of MTBE in groundwater is 23 as it's reflected on Figure 4?</p> <p>24 A. Well, no. I mean, it was</p>	<p>1 Q. Now, with regard to the 2 S6-002, that one location, are there 3 other wells at that service station 4 indicating that there are lower 5 concentrations or no MTBE present in the 6 groundwater?</p> <p>7 A. There may be.</p> <p>8 Q. With regard to the areas 9 that are illustrated on Figure 4, did 10 you subsequent to your first report 11 utilize any computer assistance to 12 illustrate the areas of contamination 13 present in Layer 1 in the aquifer in 14 2004?</p> <p>15 A. So subsequent to the first 16 report that I did, did I use a computer 17 to do what?</p> <p>18 Q. To illustrate the areas of 19 contamination present in 2004 in Layer 1 20 which you used as input values.</p> <p>21 A. Did I use the computer 22 to -- I'm not sure what you're asking 23 about the computer.</p> <p>24 Q. Okay. Looking at S6-002,</p>
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<p>1 based on the 6023, but there's no 2 additional point just, you know, a short 3 distance from S6-023 in addition to 4 that, if that's what you're asking me.</p> <p>5 Q. In looking at S6-002, you 6 have a single point at that service 7 station which reflected a concentration 8 in 2004 that is reflected in the 9 tables. And you've drawn an area around 10 that to indicate what the area of 11 contamination may be emanating from 12 S6-002, the station at 84-04 Parsons 13 Boulevard; am I correct?</p> <p>14 A. Yes.</p> <p>15 Q. Other than the well which 16 had 14,400 parts per billion of MTBE, is 17 there any other well downgradient or to 18 the southeast of that location to 19 confirm that there's MTBE present at 20 that site in the concentrations 21 indicated in the Figure 4 in your 22 rebuttal report?</p> <p>23 A. No. This was just based on 24 the 6-002.</p>	<p>1 the area that is shaded around that red 2 and tan, for lack of a better term, that 3 area, did you use a computer graphics 4 package to illustrate that area for 5 purposes of your rebuttal model?</p> <p>6 A. Well, we just -- we created 7 this input contour map using a computer.</p> <p>8 Q. And what computer model did 9 you use?</p> <p>10 A. That's not a computer 11 model; it's just a -- it is a way of 12 drawing the contour.</p> <p>13 Q. And in terms of identifying 14 the area in which certain contours would 15 be located, did you do that by hand or 16 did you let the computer prepare the 17 illustration?</p> <p>18 A. No. We looked at using a 19 computer to do this contouring, but the 20 areas involved -- the areas assigned by 21 the computer to these values were very 22 large, so we refined this -- you know, 23 we elected to use a hand-based 24 contouring method instead, which, you</p>